FILED BY CLERK
JUL 27 2009
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

LEONARD KENT, Petitioner, v. HON. BRADLEY M. SOOS, Judge Pro Tempore of the Superior Court of the State of Arizona, in and for the County of Pinal, Respondent, and THE STATE OF ARIZONA, by and through the PINAL COUNTY ATTORNEY, Real Party in Interest.	2 CA-SA 2009-0039 DEPARTMENT B DECISION ORDER

SPECIAL ACTION PROCEEDING

Pinal County Cause No. CR200900853

JURISDICTION ACCEPTED; RELIEF GRANTED

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¶1 In this special action, petitioner Leonard Kent, the defendant in the underlying action, challenges the respondent judge's order modifying his release conditions by increasing the amount of his release bond, without having provided Kent advance notice or a meaningful opportunity to respond and be heard. The real party in interest State of Arizona has not filed a response to the petition for special action, which we may regard as a confession of error as to any debatable issue. *See State v. Superior Court*, 15 Ariz. App. 145, 147, 486 P.2d 825, 827 (1971).

¶2 We accept jurisdiction of this special action because, as Kent correctly asserts, he does not have an "equally plain, speedy, and adequate remedy by appeal." Ariz. R. P. Spec. Actions 1(a); *Fragoso v. Fell*, 210 Ariz. 427, ¶ 3, 111 P.3d 1027, 1029 (App. 2005) (special action jurisdiction appropriately accepted to review pretrial incarceration issues); *see also Bolding v. Hantman*, 214 Ariz. 96, ¶ 1, 148 P.3d 1169, 1170 (App. 2006) (special action review appropriate when remedy by appeal not equally plain, speedy, or adequate); *cf. Simpson v. Owens*, 207 Ariz. 261, ¶ 13, 85 P.3d 478, 482 (App. 2004) (recognizing order denying criminal defendant bail one for which no equally plain, speedy, or adequate remedy by appeal exists). For the reasons stated below, we conclude that the issue is not merely debatable but that Kent is correct and entitled to relief.

¶3 After he was arrested, Kent initially appeared before Judge Henry Gooday, Jr., who set bond at $1,000, secured. Three days later, when Kent was indicted, the bond remained the same. But, at Kent's arraignment about a week later on May 22, the state asked

the court to increase his bond. Kent objected, asking the respondent to require the state to seek the modification in writing and requesting a hearing before the change was implemented. After obtaining information from Kent's landlord, who was present; after Kent's denial of certain accusations; and after reviewing police reports, the respondent judge increased Kent's bond to $15,000, secured, effective immediately, telling Kent he had the right to request a subsequent hearing at which he could "have this matter heard in more detail." This special action followed.

¶4 Rule 7.4(a), Ariz. R. Crim. P., requires the trial court to set a defendant's release conditions at the initial appearance. Any party may move that the conditions be reexamined when the case is transferred to a different court or if the motion alleges the existence of material facts not previously presented to the court. The court may modify release conditions, on motion of either party or on its own initiative, only "after giving the parties an opportunity to respond to the proposed modification." Ariz. R. Crim. P. 7.4(b). In construing supreme court rules, we apply the same principles of construction we apply to statutes. *Bobby G. v. Ariz. Dep't of Econ. Sec.*, 219 Ariz. 506, ¶ 9, 200 P.3d 1003, 1006 (App. 2008). The interpretation of a rule is a legal question, which we review de novo. *Fragoso*, 210 Ariz. 427, ¶¶ 7, 13, 111 P.3d at 1030, 1032. We must determine the supreme court's intent in promulgating the rule, and we do so by first considering the rule's language, which is "the best indicator of that intent." *Id.* ¶ 7. When, as here, the language is clear, we give effect to that language. *See Bolding*, 214 Ariz. 96, ¶ 6, 148 P.3d at 1171.

¶5 Rule 7.4(b) clearly and plainly requires that the trial court give the parties an opportunity to respond to any proposed modification before release conditions may be changed. The rule requires compliance with Rule 35, Ariz. R. Crim. P., which specifies the process by which parties are to present and respond to motions and provides for the hearing of such motions. This further reflects the supreme court's intent that, before a bond may be modified, the parties must have notice and an opportunity to respond to a motion for modification and be heard. So, too, do principles of due process require "notice and an opportunity to be heard at a meaningful time and in a meaningful manner." *Huck v. Haralambie*, 122 Ariz. 63, 65, 593 P.2d 286, 288 (1979). As this court stated in *Cullinan v. Avalos*, 20 Ariz. App. 454, 456, 513 P.2d 1337, 1339 (1973), "any modification [of release conditions] by the court, on its own initiative, cannot be effected without affording an opportunity to be heard." That holding applies with equal force here, despite the fact that the modification was prompted by the state's oral request rather than on the court's own initiative.

¶6 Kent was entitled to notice and an opportunity to be heard but received neither. The record does not show any circumstances justifying a limitation of that right. Consequently, the respondent judge abused his discretion by increasing Kent's secured bond from $1,000 to $15,000 at his arraignment, entitling Kent to special action relief. *See* Ariz. R. P. Spec. Actions 3(b), (c) (special action relief appropriate when respondent judge exceeded legal authority or abused discretion); *see also Twin City Fire Ins. Co. v. Burke*, 204 Ariz. 251, ¶ 10, 63 P.3d 282, 285 (2003) (judge abuses discretion by committing error of law

in reaching discretionary conclusion). We therefore vacate the respondent's order of May 22, 2009, modifying Kent's release conditions by increasing the amount of secured release bond required.

¶7 Kent asks us to decide this special action in a published decision, arguing it "involves a legal issue of substantial public importance or calls attention to a rule of law which appears to have been generally overlooked." In our discretion, we deny that request. *See generally* Ariz. R. Civ. App. P. 28; Ariz. R. Sup. Ct. 111. In our view, this issue is not novel; this court addressed essentially the same question more than thirty-five years ago in *Cullinan*, which should have provided the respondent judge with sufficient guidance. So, too, should the fact that this court previously has granted relief in similar situations, one of which involved this respondent, *Alvarez v. Soos*, No. 2 CA-SA 2008-0036 (Decision Order filed Jul. 30, 2008), and another of which involved a different judge from the same county, *Johnson v. McLean*, No. 2 CA-SA 2008-0065 (order issued Oct. 22, 2008). We do not anticipate this error will recur, given our decision in *Cullinan*; our more recent, repeated explanations of the requirements of Rule 7.4(b); and our consistent granting of relief for violations of the rule.

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GARYE L. VÁSQUEZ, Judge

Chief Judge Howard and Judge Brammer concurring.